IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2314 OF 2006

Mrs. Jayaben Jamnadas Davada & anr. ... Petitioners

V/s

M/s. Manohar & Company. ... Respondent

ALONGWITH

WRIT PETITION NO. 2315 OF 2006

Mr. Kantilal K. Shah & anr. ... Petitioners

V/s

M/s. Manohar & Company. ... Respondent

ALONGWITH

WRIT PETITION NO. 2316 OF 2006

Mrs. Jayaben Jamnadas Davada & anr. ... Petitioners

V/s

M/s. Manohar & Company. ... Respondent

ALONGWITH

WRIT PETITION NO. 2317 OF 2006

Mr. Rajnikant Shah ... Petitioner

V/s

M/s. Manohar & Company ... Respondent

Mrs. Anita R. Dwivedi for the petitioners in all petitions.

Mr. Rajeev Narula for the respondents in all the petitions.

CORAM: P.V. KAKADE, J.

DATED: 25TH APRIL, 2006

P.C.:

1. By this common order all the four petitions are being disposed of since the similar facts are involved in all the petitions.

2. Heard learned counsel for both parties. Perused the record.

3. By these petitions, the petitioners have impugned the order dated 7.3.2006 passed by the lower appellate Court which was the order passed below application Exh.5 which was for temporary injunction pending the appeal. By virtue of the said order, the common order passed by the Trial Court below Exh.6 in all the four suits was set aside which was the application for temporary injunction and allied reliefs.

4. Taking into account the facts and circumstances, it is seen that the appellate Court has issued temporary injunction restraining the present petitioners from

surrendering or transferring, alienating or assigning their tenancy rights or parting with the possession of the respective premises or inducting any third party during the tenancy of the suit.

The Trial Court was directed by the appellate Court to assign any fit and proper person as a Court Commissioner to visit the abovesaid suit premises to take measurements and actual position of user of the suit premises and take photographs of the suit premises to bring the correct position on record. Respondent No.1 tenants in all the four suits are further directed to deposit the arrears of rent upto-date in Court and with this direction the applications were disposed of.

5. Now it is an admitted position that the trials themselves are pending and common order passed by the Trial Court below Exh.6 for temporary injunction which was rejected was appealed against in the appellate Court regarding which appeals also are pending. In the said appeals, the present applications for temporary injunctions were filed.

6. To say the least, it would have been in the fitness of the things for the lower appellate Court to decide

the appeals instead of deciding the applications for temporary injunction in the course of the appeals. However, it cannot be said that there was any illegality committed by the appellate Court in deciding the temporary injunction applications in pending appeals which were themselves against the rejection of applications for temporary injunction.

7. Taking into account the facts involved in the matter, this Court need not go into the merits of the case. Moreover, the petitioners are injuncted against the transferring or alienating or assigning their tenancy rights pending the trials and also from inducting third party in the suit premises pending adjudication of the trials which aspect need not cause any prejudice to the petitioners and, as such, I do not see any merits in the plea advanced on behalf of the petitioenrs.

8. Remaining directions issued by the appellate Court appears to be consequential in the sense that appointment of the Court Receiver is directed to be made, which, this Court need not interfere with. The learned counsel for the petitioners made submission that all the arrears of rent were deposited by them in the

Trial Court and, therefore, the direction to that effect by the appellate Court was not called for. In this regard, it must be noted that, if at all, the petitioners have deposited the upto-date rent amounts in the Trial Court, they be neither accepted nor directed to re-deposit the amount as the direction is regarding depositing of the arrears of rent, if any.

9. Under the circumstances, I do not see any merits in the petitions especially when the petitioners have expressed in clear terms that they do not intend to create third party interest nor they are willing to assign or alienate any interest in the suit property.

10. The appellate Court is directed to adjudicate and dispose of the pending appeals expeditiously so as to decide them within a period of three months from the date of this order.

With these directions, the petitions stand disposed of with no order as to costs.

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